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STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company, )  
)  
2008 - 2010 Energy Efficiency ) Docket 07-0540  
And Demand Response Plan )  
Filed on November 15, 2007 )

Natural Resources Defense Council Exhibit 1.0

Direct Testimony of Henry Henderson

On Behalf of

The Natural Resources Defense Council

CONFIDENTIAL FILE  
ILL. COM. DOCKET NO. 07-0540  
NRDC EXHIBIT No. 1.0 w/Att A  
Date 11/16/08

Submitted: December 15, 2007

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25

**DIRECT TESTIMONY OF HENRY HENDERSON**

26 **Q. Please state your name and business address.**

27 A. My name is Henry Henderson. My address is 101 North Wacker Drive, Suite 609,  
28 Chicago, IL, 60606.

29 **Q. Please identify your employer and your job title**

30 A. I am employed by the Natural Resources Defense Council, where I am Director of the  
31 Midwest Regional Office.

32 **Q. What are your responsibilities in this position?**

33 A. I am responsible for overseeing and directing policy, programs and management of the  
34 Natural Resources Defense Council's Midwest Office. NRDC's mission is to provide  
35 fact-based advocacy, including law, science and policy action to solve environmental  
36 problems. A key focus on NRDC's Midwest Office is energy policy and regulation,  
37 including renewable energy, energy efficiency, coal, biofuels and global warming.

38 **Q. Do you have previous professional experience that relates to the testimony you here  
39 provide?**

40 A. From 2000 – 2006 I was a partner at Policy Solutions, Ltd., based in Chicago, where I  
41 provided policy, regulatory and economic analysis on environmental programs, policy,  
42 legislation and regulations. I addressed energy, global warming, and government  
43 relations, among other matters. From 1992 -- 1998, I established and led the newly

44 created Department of the Environment for the City of Chicago. My areas of  
45 responsibility included Chicago's energy policies, deregulation and enforcement of  
46 regulations. From 1998 - 2005 I was a lecturer at the University of Chicago on  
47 Environmental Law and Policy.

48 Q. What is your educational background?

49 A. I received a Bachelor of Arts degree from Kenyon College in Gambier, Ohio and a J.D.  
50 from Washington University School of Law in St. Louis, Missouri.

51 Q. On whose behalf are you testifying?

52 A. I am testifying on behalf of the Natural Resources Defense Council (NRDC). NRDC is a  
53 non-profit membership organization with 1.2 million members and on-line activists  
54 nationwide; 217,500 members and on-line activists in eight Midwest states<sup>1</sup> and 20,000  
55 in Illinois. NRDC has a long-standing interest in promoting energy efficiency and other  
56 demand-side resources as viable and cost-effective alternatives to conventional supply-  
57 side generation resources such as coal and nuclear plants.

58 Q. What is the purpose of your testimony?

59 A. The purpose of my testimony is to provide testimony on the Commonwealth Edison's  
60 2008 - 2010 Energy Efficiency and Demand Response Plan and related issues.

61 Q. Do you have comments about ComEd's proposed programs?

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<sup>1</sup> The states are: Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin.

62 A. I recommend that ComEd consider adding two additional programs: 1. a Residential New  
63 Construction Program, and 2. a Statewide Energy Efficiency Web Site with information  
64 about energy efficiency, including tools, training, and program information, administered  
65 by DCEO with input from ComEd and Ameren. I describe each recommendation further  
66 below.

67 Residential New Construction

68 I recommend that ComEd consider adding a Residential New Construction Program.  
69 Many measures are less expensive to install during new construction than they are during  
70 a retrofit. Thus, not installing energy efficient measures during the new construction  
71 stage is said to create "lost opportunities." Other jurisdictions have had good program  
72 penetration and success with residential new construction programs that offer designers  
73 and builders design assistance and incentives for building homes that achieve energy  
74 savings above a certain threshold level.

75 Statewide Energy Efficiency Web Site

76 Building awareness of energy efficiency and energy efficiency technologies will be an  
77 important element of a successful energy efficiency portfolio. I recommend that the  
78 portfolio administrators support development of a statewide web site that contains  
79 information about energy efficiency measures, tools and resources, training, and a  
80 description of all energy efficiency programs that are available statewide. Given  
81 DCEO's role in promoting "market transformation" activities, NRDC recommends that  
82 DCEO assume the responsibility for creating and maintaining a statewide energy  
83 efficiency web site, in coordination with ComEd and Ameren.

84 Q. **Do you have any comments about the Stakeholder Advisory Process?**

85 A. I participated in the stakeholder collaborative process that led to the development of the  
86 Energy Efficiency and Demand Response Plans. I appreciated the opportunity to provide  
87 input, and believe that a meaningful, ongoing Advisory Process as program details are  
88 finalized, and programs are implemented and evaluated, is important for maximizing  
89 benefits from the demand-side portfolio.

90 I recommend that the Commission authorize a Demand-Side Stakeholder Advisory  
91 Process for all three portfolio administrators (ComEd, DCEO and Ameren). I further  
92 recommend that the Commission authorize the following process elements.

93 1. Process is Advisory: The three portfolio administrators are accountable for achieving the  
94 portfolio goals. Thus, they should have flexibility and discretion to manage the portfolio  
95 and programs to meet their statutory obligations and any Commission-established policy  
96 objectives and guidelines for the demand-side programs. Advisory Process members  
97 should not be vested with decision-making authority but instead should serve as advisors  
98 to improve the demand-side portfolio performance.

99 2. Statewide Combined Advisory Process: The Advisory Process should include all three  
100 program administrators, ComEd, Ameren and DCEO. A separate process for each  
101 administrator will not lead to statewide consistency and will be much more expensive for  
102 stakeholders to participate in. Some program issues will be utility-specific and should be  
103 handled in separate utility-specific working groups.

104 3. Required Notice and Comment for Certain Issues: To maximize the benefits from the  
105 demand-side portfolio, the portfolio administrators should seek input from the  
106 knowledgeable and dedicated community of stakeholders before making certain changes  
107 to the portfolio or programs. Stakeholders should be given notice and the opportunity to

108 comment on key issues that could impact portfolio costs or savings as set forth in  
109 Attachment A, appended hereto.

110 4. Meeting Format: So that stakeholders have time to meaningfully review issues that are  
111 before them, I recommend that a meeting agenda and meeting materials be circulated a  
112 specified number of days before the Advisory Process meetings.

113 5. Advisory Process Comment Tracking and Response System: After each meeting, the  
114 meeting facilitator should summarize issues raised, proposed action items and  
115 stakeholders questions. The meeting facilitator should work with the portfolio  
116 administrators to prepare responses to all items and identify which items caused the  
117 administrators to modify its portfolio or programs. The Comment Tracking and  
118 Response System will help demonstrate to stakeholders that their participation resulted in  
119 meaningful discussions and change.

120 In addition to the elements above that I recommend the Commission formally authorize, I  
121 offer additional comments on the Advisory Process for the portfolio administrations and  
122 other parties to consider as the Advisory Process moves forward. The additional  
123 comments are set forth in Attachment A.

124 Q. **Do you have any comments about statewide consistency for the demand-side**  
125 **portfolio?**

126 A. Many elements of the demand-side portfolio can be addressed consistently in Illinois.  
127 Consistency serves to minimize costs and customer confusion, ease administrative burden  
128 on the Commission and other stakeholders, and produces energy savings that are easier to  
129 document. I recommend that Commission authorize the portfolio administrators to seek  
130 statewide consistency for the following elements of the demand-side portfolio, and

131 consider others that stakeholders and Commission staff raise: 1. Statewide Energy  
132 Efficiency Web Site; 2. statewide public cost-effectiveness calculator and inputs and 3.  
133 statewide program data tracking and reporting system.

#### 134 Statewide Energy Efficiency Web Site

135 As described above, I recommend that DCFO design and implement a Statewide Energy  
136 Efficiency and Demand Response web site, with input from ComEd and Ameren, as part  
137 of its market transformation, training and outreach goals to help build "brand awareness"  
138 of energy efficiency in IL.

#### 139 Statewide, Public Cost-Effectiveness Calculator and Inputs

140 The portfolio administrators used a proprietary tool to analyze proposed program savings.  
141 (ComEd Exhibit L0, p. A-6, fn 1.) For the future, it will be important to develop a public,  
142 transparent cost-effectiveness tool that the portfolio administrators, ICC staff, program  
143 implementers and other interested parties can use to evaluate prospective program and  
144 portfolio cost-effectiveness, monitor cost-effectiveness as the programs and portfolios are  
145 implemented, and develop new program ideas that may provide greater savings than the  
146 proposed programs.

147 I recommend that the portfolio administrators work together to develop a cost-  
148 effectiveness tool for measure-level, program and portfolio cost-effectiveness with input  
149 from the Advisory Process. Once the tool is developed, it should be available to the  
150 public for all parties to use to develop and evaluate proposed programs and projects.  
151 Similarly, given the absence of data for IL, the utilities reasonably used measure data  
152 from other jurisdictions. However, given the size of energy efficiency program  
153 expenditures in IL, I recommend that the portfolio administrators develop and agree to

154 use common measure savings and cost values for common measures. The measure  
155 values can be updated once IL-specific EM&V results are produced. I also recommend  
156 that the portfolio administrators develop a common approach for documenting savings  
157 for less common measures so that staff and interested parties can review whether the  
158 proposed measure-level savings and costs seem reasonable.

159 Statewide Program Data Tracking and Reporting

160 I recommend that the three portfolio administrators use the same program data tracking  
161 and reporting tool so that the portfolio, program and measure-level data can be reviewed  
162 and evaluated using common metrics and a common process. A common data set and  
163 reporting format will ease the burden on ICC staff and other interested parties and lower  
164 data tracking and reporting costs.

165 Consult Stakeholders on Other Aspects of the Demand-Side Portfolio that Should be  
166 Addressed Statewide

167 I recommend that the portfolio administrators seek input from stakeholders on other  
168 elements of the demand-side portfolio that should be statewide consistent, including and  
169 in addition to those that are described in these comments.

170 **Q. Do you have any comments on the portfolio administrator's requests for broad**  
171 **flexibility to modify the proposed programs after program approval?**

172 **A.** All three portfolio administrators request extremely broad flexibility to modify the  
173 proposed programs after Commission approval, including the flexibility to shift funds  
174 between programs. I support administrator flexibility to respond to market conditions  
175 within certain guidelines. However, the ICC program approval process is meaningless if  
176 the flexibility is unlimited. Thus, I recommend that the ICC should provide

177 administrators clear guidelines about what program and portfolio changes are appropriate  
178 without seeking ICC approval, and what changes require either notice or comment to the  
179 Advisory Stakeholder Process or the Commission. My recommendations on areas where  
180 the Advisory Process stakeholders be given notice and the opportunity to comment are  
181 set forth in Attachment A. I recommend that the ICC flexibility guidelines cover at least  
182 the following topics:

- 183 \* Shifting budgets between program
- 184 \* Adding or deleting a program
- 185 \* Adding or deleting measures

186 Q. **Do you have comments on how the 3% Evaluation, Measurement and Verification**  
187 **budget should be spent?**

188 A. A 3% budget for EM&V is small to document program impacts, particularly for a new  
189 suite of programs. Given the importance of documenting savings to verify whether the  
190 portfolio administrators have met their statutory goals, I recommend that ICC rule that  
191 the EM&V budget can only be spent to document impacts.

192 I agree that other studies that traditionally fall under the EM&V framework are  
193 important, such as potential studies and market assessments. However, other funds  
194 should and can be used for potential studies and market assessments, such as monies  
195 designated for program marketing, since potential studies and market assessments can  
196 help inform sound program design and effective program marketing. I recommend that  
197 the ICC rules that EM&V funds can only be used to document savings from programs.

198 Q. **Do you have any recommendations on the energy efficiency and demand response**  
199 **regulatory framework?**

200 A. For the demand-side portfolio to become a reliable resource and replace conventional  
201 supply, effective government oversight of the portfolio is necessary. A robust regulatory  
202 framework also promotes accountability, transparency and consistency, will help  
203 maximize available cost-effective savings. I recommend that ICC direct staff to convene  
204 a workshop that solicits comments from interested stakeholders about the attributes of  
205 and appropriate procedural vehicle for developing an effective regulatory framework for  
206 the demand-side portfolio. The workshop content and agenda should also reflect  
207 recommendations from the recent Midwestern Governor's Association 2007 Energy  
208 Summit on the demand-side portfolio.

209 Q. **Do you have any recommendations about the frequency and content of reports to**  
210 **the Commission on portfolio and program progress?**

211 A. Regular reporting is important for several reasons. First, reporting reveals whether the  
212 portfolio and programs are on track for meeting statutory goals and other policy  
213 objectives, such as ensuring that low-income households are receiving services in  
214 proportion to their share of total annual utility revenues in IL. Second, regular reporting  
215 helps with portfolio risk mitigation. For example, if a large percentage of the portfolio  
216 funds are being used for any one measure, the risks that the portfolio will not produce  
217 expected savings increase if the savings from that measure turn out to be less than  
218 forecast based on post-program EM&V. Third, regular reporting will help identify  
219 programs that are not performing as expected and need mid-course corrections. Finally,  
220 regular reports will help ensure that funds are being spent prudently. If funds are being  
221 spent but savings are not produced, this fact might indicate that funds are not being  
222 prudently spent.

223 I recommend that the Commission develop a regular reporting schedule, including  
224 monthly, quarterly and annual reports that contain increasing levels of detail, as follows:

- 225 • Monthly Reports: I recommend a one-page summary that lists spending and  
226 energy savings (including program commitments) by program.
- 227 • Quarterly Reports: I recommend cumulative savings and expenditures by  
228 program, savings and expenditures by customer class (such as residential, low-  
229 income, commercial, industrial, "public" customers such as schools, local  
230 government and municipal corporations), and savings by end use.
- 231 • Annual Report: In addition to information I recommend be included in the  
232 quarterly reports, I recommend a narrative description of successes and  
233 challenges by program, discussion of programs and areas where the three  
234 portfolio administrators are working together statewide to ensure consistency  
235 where doing so reduces customer confusion, costs, and eases administrative  
236 burdens on the ICC and other stakeholders, and the Advisory Process Comment  
237 Tracking and Response System.

238 Q. Do you have any comments on how the Commission should provide oversight for  
239 program costs to ensure program funds are being used prudently?

240 A. Program success and measure penetration are influenced by the magnitude of the  
241 incentives that customers receive and the overall amount of the program incentive  
242 budget. In general, the more money allocated to incentives, the more successful the  
243 program will be. In contrast, program administrative costs do not necessarily correlate  
244 with improved program performance. Furthermore, in other jurisdictions, energy

245 efficiency administrative costs have been used to cross-subsidize activities that don't  
246 contribute to energy efficiency program success.

247 I recommend that the Commission identify, then define, a few broad cost  
248 categories for energy-efficiency program expenses. Four cost categories that would  
249 capture key distinct portfolio and program activities are: administration, implementation,  
250 marketing and outreach, and incentives. I recommend that the Commission review  
251 administrative costs to assess whether they are necessary and prudent.

252 Once cost-categories are defined, I recommend that the Commission monitor  
253 administrative costs to ensure energy efficiency program dollars are spent to maximize  
254 benefits from the demand-side portfolio and are not used to cross-subsidize other  
255 activities.

256 **Do you have any concluding remarks?**

257 To summarize, NRDC recommends that the Commission approve ComEd's Energy  
258 Efficiency and Demand Response Plan that is before it so that the programs can move  
259 forward and start producing energy savings for the State of Illinois.

260 Furthermore, I recommend that ComEd consider adding two new programs: 1. a  
261 Residential New Construction Program (ComEd and Ameren); and 2. A Statewide  
262 Energy Efficiency Website administered by DCEO in coordination with ComEd and  
263 Ameren.

264 Furthermore, in the order approving the Plans, I recommend that the Commission:

265 1. Authorize a Stakeholder Advisory Process, including the following elements:

- 266 • Process is advisory
- 267 • Statewide combined Advisory Process;

268                   • Requirement of notice and comment for certain issues

269                   • Meeting format

270                   • Advisory Process Comment Tracking and Response System

271           2. Authorize the portfolio administrators to seek statewide consistency when doing so

272           would reduce costs and customer confusion, and reduce administrative burdens on the

273           ICC staff and interested stakeholders, including: a public and consistent cost-

274           effectiveness calculator, measure input values, statewide EE website and program data

275           tracking and reporting.

276           3. Adopt rules that govern what flexibility portfolio administrators have to modify the

277           portfolio and programs after Commission approval of the Plans that address the following

278           portfolio and program changes:

279                   • Shifting budgets between programs

280                   • Adding or deleting a program

281                   • Adding or deleting measures

282           3. Rule that EM&V funds can only be used to document savings, and not for market

283           assessments, potential studies, or other types of studies that do not serve to document

284           program savings.

285           4. Direct ICC staff to host a workshop to consider attributes of and appropriate

286           procedural vehicle for developing an effective regulatory framework.

287           4. Mandate regular reporting (monthly, quarterly, annual) containing the information

288           described above.

289 5. Identify, then define, four cost categories that would capture key distinct portfolio and  
290 program activities including: administration, implementation, marketing and outreach,  
291 and incentives.

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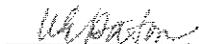
STATE OF ILLINOIS            )  
  )SS  
COOK COUNTY                    )

VERIFICATION

Henry L. Henderson, being first duly sworn, on oath deposes and states that he is an attorney with the Natural Resources Defense Council, that he read the foregoing Testimony, that he knows its contents, and knows the contents to be true and accurate to the best of his knowledge and belief.

  
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SUBSCRIBED AND Sworn  
to me on this 13 day,  
December 2007.

 Notary Public



308 **Attachment A:**

309 **Principles and Guidelines**  
310 **for the Advisory Demand-Side**  
311 **Stakeholder Collaborative Process**

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313 Overview

314  
315 An inclusive, transparent, meaningful Advisory Demand-Side Stakeholder Collaborative  
316 Process ("Advisory Process") is essential for fostering the success of the emerging  
317 demand-side portfolio in Illinois, and helping demand-side options become viable and  
318 cost-effective alternatives to conventional supply-side generation resources such as  
319 coal and nuclear plants.

320  
321 NRDC recommends the following principles and guidelines for the stakeholder process.

322  
323 Stakeholder Collaborative Process Objectives

324  
325 NRDC recommends the following objectives for the Advisory Demand-Side Stakeholder  
326 Collaborative Process:

327  
328 Stakeholders shall be given the opportunity to advise the demand-side portfolio  
329 administrators on portfolio and program objectives, and on the design, administration,  
330 implementation and evaluation of the portfolio and programs to:

- 331  
332 1. Help demand-side options become viable and cost-effective alternatives to  
333 conventional supply-side generation resources;  
334 2. Maximize benefits and minimize costs associated with the demand-side portfolio  
335 and,  
336 3. Monitor whether the portfolio and programs are meeting statutory and regulatory  
337 objectives.

338  
339 Participants

340  
341 We recommend that the following participants be included in the Stakeholder Process:

- 342  
343 1. ComEd, Ameren, and DCEO

344  
345 The Advisory Process will be time-consuming and resource intensive if  
346 participants are to provide meaningful and thoughtful input. Furthermore, many  
347 of the programs should be statewide consistent to maximize benefit and minimize

348 costs and consumer confusion. Thus, we recommend that the Advisory Process  
349 include all three portfolio administrators.

350  
351 **2. Environmental Groups**

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353 Environmental Law and Policy Center, Environment Illinois, Natural Resources  
354 Defense Counsel

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356 **3. Consumer Groups**

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358 Citizens Utility Board

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360 **4. Energy Efficiency Stakeholders**

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362 Midwest Energy Efficiency Alliance, Center for Neighborhood Technology

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364 **5. State Government Representatives**

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366 ICC Staff, Attorney General's Office, Governor's Energy Advisor

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368 **6. Local Government Representatives**

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370 Metropolitan Mayors Caucus, City of Chicago

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372 **7. Trade Organizations**

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374 Illinois Industrial Energy Consumers, Building Operators and Managers  
375 Association

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377 **8. The Public**

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379 Members of the public should be permitted to attend meetings, observe and ask  
380 questions or provide comments if time permits.

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383 **Facilitation**

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385 NRDC agrees with ComEd that meetings should be facilitated by an individual  
386 accepted by all parties. If all parties can't agree, then the designated facilitator should  
387 be the person who receives support from the greatest number of parties.

388 Process

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390 **1. Before the Meeting**

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392 We recommend the following pre-meeting activities:

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394 • Meeting Notice: Meetings shall be noticed by e-mail to the Service List for Docket  
395 No. 07 – 0540 and to members of the public who ask to be added to the meeting  
396 service list.

397 • Meeting Agenda: At least two weeks before the meeting, the meeting facilitator  
398 shall circulate a meeting agenda for review and comment. Participants may  
399 request that discussion items be added to the agenda.

400 • Meeting Materials: All meeting materials shall be circulated at least five business  
401 days before the meeting to allow time for meaningful review and comment.  
402 Participants may submit written questions to be addressed before the meeting or  
403 ask questions during the meeting on the meeting materials.

404 • Demand-Side Stakeholder Process Web Site: An Advisory Demand-Side  
405 Stakeholder Process Web Site will be established, and meeting agendas,  
406 materials, and post-meeting follow-up will be posted on the site for easy review  
407 and access

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409 **2. During the Meeting**

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411 • Time Allocated for Discussion/Comment: At least one-third of the meeting time  
412 will be for comments and discussion by the Advisory Process members and  
413 members of the public. The remaining time may be used for presentations by the  
414 portfolio administrators.

415 • Public Discussion/Comment: Members of the public will be permitted to ask  
416 questions and provide comments during the discussion period. However, if the  
417 discussion period is limited, stakeholders will be given priority over members of  
418 the public to provide comments and ask questions.

419 • Follow-Up Issues, Questions, Action Items: All questions, issues and action  
420 items that are not resolved in the meeting will be transcribed for further follow-up.

421 • Meetings Not Transcribed: Meetings will not be transcribed.

422 • Polycom: The meetings should be transmitted by a polycom to permit remote  
423 participation by those who cannot participate in person.

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### 3. Post Meeting Follow-Up

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- Comment Tracking and Response System: Within ten business days of the meeting, the meeting facilitator will summarize issues raised, proposed action items, and questions that stakeholders raise. The meeting facilitator shall work with the portfolio administrators to prepare responses to all items. If the issue cannot be addressed or resolved within the ten business days, then the document will describe when and how the issue can be addressed or resolved. The portfolio administrators shall identify which items resulted in a modification to the portfolio or program elements.

The Comment Tracking and Response system will help demonstrate to stakeholders that their participation resulted in meaningful discussions and change.

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#### Actions that Require Notice to the Advisory Process Members and an Opportunity for Comment

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We recommend that Advisory Process members be given the opportunity to comment on the following for items:

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1. Reallocating funds among program elements (such as between residential lighting to residential HVAC) where the change for any specific budget is greater than 20%;
2. Discontinuing approved program elements (such as discontinuing Single Family Home Energy Performance);
3. Adding new program elements;
4. Increasing the administration, implementation or marketing budget more than 20% above the original approved funding levels for any program element;
5. Adding or deleting program measures;
6. Reducing the incentive budget for any program element below the amount originally approved;
7. Change to whether a program is offered statewide or just by one portfolio administrator; and
8. Dismissing ComEd's evaluation contractor, and hiring a new contractor.

460

461 Annual Review

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463 On an annual basis, the portfolio administrators will hire an independent evaluator to  
464 survey the Advisory Process members to assess whether the process is accomplishing  
465 the stated objectives, and to identify ways to improve the process to make it more  
466 efficient, transparent and impactful.

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470 **Advisory Demand-Side Stakeholder Collaborative Process**  
471 **Comment Tracking and Response System**

472

473

474 Meeting Date:

475 Meeting Attendees (including organizational and contact information):

476 Meeting Facilitator:

477

<b>Issue, Question or Action Item</b> <ul style="list-style-type: none"> <li>• Including person/party who raised item</li> </ul>	<b>Response</b> <ul style="list-style-type: none"> <li>• Proposed resolution or</li> <li>• Timeline and process for resolving issue</li> </ul>	<b>Resulting impact on Demand-Side Portfolio or Program</b> <ul style="list-style-type: none"> <li>• Was change made to portfolio or program as result of issue?</li> <li>• How?</li> </ul>

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